

Guidance

Alcohol licensing: guidance on new temporary off-sales permissions

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This guidance relates to the alcohol licensing provisions in the Business and Planning Act 2020 only. It is separate to the guidance on [working safely during Covid-19](#) issued by the Department for Business, Energy and Industrial Strategy and the Department for Digital, Culture, Media and Sport.

1. What is the purpose of this temporary off-sales extension?

Businesses such as pubs, bars and restaurants have been hit hard by Covid-19. Many have been closed for an extended period and as they re-open, social distancing guidance will significantly affect their capacity to accommodate customers. This measure forms part of a package designed to make it easier for businesses to make use of outdoor space for dining and the sale of alcohol, helping the hospitality sector get back on its feet again through the busy summer months.

The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, which will allow businesses to trade and maintain social distancing.

The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the closure time of an existing outside area, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission.

Conditions on existing dual premises licences (permitting both on-sales and off-sales) that would prevent one or more of the following are also suspended under the temporary off-sales permission:

- (i) off-sales being made at a time when the premises are open for the purposes of selling alcohol for consumption on the premises (subject to a cut off time of 11pm or the closure time of an existing outdoor area, whichever is earlier);
- (ii) off-sales being sold in an open container; and,
- (iii) deliveries to buildings used for residential or work purposes

The new off-sales permission is authorised under section 172F(2) of the Licensing Act 2003 in respect of on-sales licences and section 172F(5) of the Licensing Act 2003 in respect of dual licences.

2. Does the extension apply to outdoor areas?

There are two main types of outdoor places from which alcohol will be consumed: (a) an outdoor place which is covered by the premises licence for on-sales, and (b) an outdoor space which is not covered by the premises licence and is therefore an off-sale (e.g. on a highway). The provisions in the Act will enable off-sales to be made into spaces not covered by the premises licence.

3. Will all premises that currently only have permission for on-sales be given the new permission for off-sales?

Most will, but some will be excluded. The permission is only given to businesses with premises licences, so those organisations with club premises certificates are not covered by the provisions in the Act. Where organisations with club premises certificates that do not permit off-sales, those organisations will need to seek permission to do so from the licensing authority. In addition, a premises licence that only permits on-sales will be excluded if, within the three years preceding on day 22 July 2020:

- a premises licence application was made for a licensed premises and permission for off-sales was refused;
- a licence variation seeking permission for off-sales was refused;
- a licence variation seeking to exclude the off-sales permission was accepted; or
- the premises licence was varied or modified on review to exclude off-sales.

4. Will this permission be permanent?

No, the permission and any conditions attached to it are temporary. The permission will lapse on 30 September 2021, unless the temporary period is extended by regulations made by the Secretary of State or is otherwise suspended, removed or varied.

5. What is the difference between pavement licences and alcohol licences?

The grant of a pavement licence only permits the placing of furniture on the highway. Premises that wish to expand outdoors, with customers consuming alcohol on the highway will need both a premises licence to sell alcohol and a pavement licence.

Alcohol licences are specifically for the sale of alcohol at the premises for consumption either on or off the premises. Because the new permission is automatic, an application for an off-sales alcohol licence does not need to be made, if the premises already has an on-sales alcohol licence and has not had a disqualifying event in the last three years.

6. My premises licence has lapsed/been surrendered/is suspended. Will the new off-sales permission apply if the licence comes back into effect?

Yes. Any premises licence that was “capable of having effect” when this legislation commenced on 22 July 2020 will be able to benefit from the new temporary permission, subject to the exclusions set out in the section above.

7. The premises licence was only transferred to me recently. How would I know if my premises are excluded?

If you are in any doubt about whether the new permission applies to your premises, you should contact your local licensing authority to check.

8. Do I need my local licensing authority’s permission to start making off-sales?

You do not. However, you should notify your licensing authority if you intend to start making off-sales under the new permission, so that they are aware of all the ways you are providing licensable activities. As above, your licensing authority can also clarify whether or not you are eligible to benefit from this permission. The licensing authority will not be able to issue a counter-notice to prevent you from making off-sales authorised under the new permission.

9. Do I have to wait for the licensing authority to acknowledge my notification before I can start making off-sales?

No. You can start making off-sales right away.

10. Do I need to alter the summary of my licence that is displayed on the premises?

No, but if you are making use of the new temporary permission to undertake off-sales under section 172F(2) or of any of the temporary conditions under section 172F(5), a new statement that this is the case must be prepared by you (“a section 172F statement”).

If you are making use of the new temporary permission for off-sales, the statement must be clear that off-sales are authorised under section 172F(2) , subject to the requirement that the premises must be open for the sale of alcohol on the premises.

If you have a dual licence and are relying on any of the temporary conditions in section 172F(5), the statement must also list them.

The section 172F statement must be kept on the premises or under the control of the holder of the licence or a person who works at the premises who has been nominated by the holder of the licence for this purpose. A copy of the section 172F statement must be prominently displayed at the premises alongside the summary of your premises licence.

Failure to comply with these requirements without reasonable excuse is an offence.

11. Will I need to amend my premises plan to show new outdoor areas where customers will consume alcohol?

No, but as above you should notify your local authority if you are planning to make use of the temporary permission. Only areas where on-sales are authorised to take place are shown on the premises plan.

12. My premises are in an area where there is a public space protection order (PSPO) banning the consumption of alcohol in public. Do the pavement and alcohol licensing provisions in the Act override this?

The provisions in the Act do not override or suspend PSPOs that ban the consumption of alcohol in public. If your premises are located in such an area and you would like your customers to be able to consume alcohol outside or off the premises, you will need to apply for a permission under section 115E of the Highways Act 1980.

13. At what times will the new permission allow me to make off-sales?

The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the closure time of an existing outdoor area, whichever is earlier.

14. I already have an off-sales permission in my licence. Will this legislation have any effect on my premises?

It may. The legislation will apply up to three temporary variations to licences with an existing permission for off-sales.

1. The licence is varied to allow off-sales until 11pm, or until the current on-sales licensing hours for that premises end, whichever is the earlier, however the premises must be open for the primary purpose of on-sales trade. New off-sales permission will not apply to times when a premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises.
2. If an existing condition(s) prevents off-sales in open containers, then this variation allows sales in open containers.
3. If an existing licence condition(s) prevents off-sales of alcohol for delivery, this variation allows deliveries, providing that they are to buildings used for residential or work purposes.

The existing conditions that prevent these matters are suspended until 30 September 2021.

15. Can I apply to vary those conditions?

Yes. You can apply to vary these temporary conditions and doing so will not affect any conditions on your existing off-sales permission that have been suspended as a result of the temporary variations.

16. Will any variation that is granted be permanent?

A variation to the conditions would only be permanent if you applied to vary the off-sales permission you already hold, or you apply for a new off-sales permission.

17. When could I apply to make the off-sales permission permanent?

At any time. There is no need to wait until September 2021 to apply for a variation to your premises licence to permit off-sales at the end of the temporary period.

18. Why are you limiting where premises with an existing permission can make deliveries of alcohol when there is no such limitation on premises with a new permission?

This additional safeguard upholds previous licensing authority's decisions where conditions have been previously added which bars premises from making off-sales for delivery.

19. The new summary off-sales review process

19.1 What is the existing summary review process?

The existing summary review process allows a quick process for attaching interim conditions to a licence and a fast-track licence review when the police consider that the premises concerned is associated with serious crime or serious disorder (or both). The chief officer of police for the area in which the premises are situated may apply to the licensing authority for an expedited review of a premises licence where a senior police officer has issued a certificate stating that in his/her opinion the premises are associated with serious crime or serious disorder (or both). On receipt of the application and the certificate, the licensing authority must within 48 hours of the time of its receipt consider whether it is necessary to take interim steps pending determination of the review of the premises licence – the authority must in any event, within 28 days after the day of receipt of the application, undertake a review and reach a determination on that review. Summary review guidance is available on gov.uk.

19.2 Why was it necessary to create a new review process?

The temporary off-sales permission is a departure from standard licensing practice, in which every application for an off-sales permission would be considered by a licensing authority, the police, other responsible authorities. Since that safeguard is not present, an expedited review process capable of taking swift action to tackle problems relevant to one or more of the licensing objectives has been put in place.

19.3 Will the summary off-sales reviews be just like summary reviews?

The summary off-sales review is modelled on the existing summary review process, but there are some significant differences, as set out below.

19.4 Will reviews of premises where off-sales create problems must use this process?

No. The ordinary review process under section 51 of the Licensing Act 2003 and summary reviews under section 53A will still be available. However, the summary off-sale review process provides an expedited process to review the new off-sales permissions on grounds relevant to one or more of the licensing objectives.

19.5 Who can apply for a summary off-sales review?

Only a responsible authority under the Licensing Act 2003 can apply for an off-sales review.

19.6 On what grounds can a summary off-sales review be applied for?

An application can be made on grounds relevant to one or more of the four licensing objectives (the prevention of crime and disorder, the prevention of public nuisance, public safety, and the protection of children from harm). An existing summary review can only be applied for where a senior police officer has given a certificate that it is their opinion that the premises are associated with serious crime or serious disorder or both. No similar certificate will be required for the off-sales review process.

19.7 Could the grounds for review relate to any problem with off-sales?

The grounds could relate to any problem with off-sales made under the new permission, provided that they are relevant to any of the the licensing objectives. However, if you had a pre-existing off-sales permission, the grounds must relate to changes made by the temporary conditions. So, for example, if your hours for off-sales were extended from 10 to 11 p.m. by the temporary condition, grounds for the off-sales review would have to relate only to problems occurring in that additional hour.

19.8 How quickly will the licensing authority be required to consider interim steps?

Within 48 hours of receiving the application for a review, disregarding non-working days. There is no need for a hearing to be convened before Councillors of the licensing committee or sub-committee to determine the initial interim steps. It is for Members to make decisions about interim steps rather than licensing officers.

19.9 What interim steps could be taken?

In the case of a licence with no previous off-sales permission, the possible interim steps following the licensing authority receiving an application for a summary off-sales review are:

- (a) the modification of the conditions of the licence that relate to off-sales authorised by the new permission;
- (b) the exclusion of off-sales authorised by the new permission from the scope of the licence; or,
- (c) the suspension of the new off-sales permission.

In the case of a premises licence with an existing off-sales permission, any interim steps can only modify or exclude the new, temporary conditions or add new conditions to off-sales which relate to those new temporary conditions. Interim steps can only relate to the new temporary conditions, and not the existing off-sales permission.

19.10 Why are the interim steps different, depending on whether I have a new permission or an existing one?

The summary off-sales review process is an expedited review process that applies only in relation to the new permission or conditions given under section 172F of the Licensing Act 2003. In the case of both interim steps and the review hearing, any measures taken must relate to the new permission or conditions granted under section 172F. Pre-existing permissions and conditions are, therefore, out of scope of the summary off-sales review process, and the premises licence as a whole cannot be modified, suspended or revoked under the summary off-sales review process.

19.11 Will premises licensees be given notice of any interim steps?

If the licensing authority decides to apply interim steps, it must notify the premises licence holder of its decision and give reasons immediately.

19.12 Can I object to any interim steps made pending the determination of the review?

You may submit representations objecting to any interim steps made. Should you do so, the licensing authority will be required to hold a hearing within 48 hours of receiving them to consider your representations.

19.13 When will the review hearing take place?

The hearing must take place and the review be determined within 28 days after the day of the receipt of the application by the licensing authority.

19.14 What steps could the licensing committee take at the review hearing?

In the case of a licence with no previous off-sales permission, the possible steps are:

- (a) the modification of the conditions of the licence that relate to off-sales authorised by the new permission;
- (b) the exclusion of off-sales authorised by the new permission from the scope of the licence; or
- (c) the suspension of the new off-sales permission for no more than three months.

In the case of a premises licence with an existing off-sales permission, steps could only modify or exclude the new, temporary conditions or add new conditions to off-sales which relate to those new temporary conditions. The steps would only relate to the new temporary conditions, and not the existing off-sales permission.

19.15 Why are those steps different, depending on whether I have a new permission or an existing one?

The purpose of the summary off-sales review is to provide an expedited review only in relation to the new permission or conditions given under section 172F of the Licensing Act 2003. Pre-existing permissions and conditions are, therefore, out of scope of the summary off-sales review process, and the premises licence as a whole cannot be modified, suspended or revoked under the off-sales review process.

19.16 Will any interim steps end on the date of the review hearing?

The licensing authority is required to review any interim steps that have effect on the date of the review hearing and consider whether any remain appropriate and in force until the review decision comes into effect (either after the 21 day appeal period if there is no appeal, until any appeal is determined, or as specified by the licensing authority).

19.17 Can I appeal against the decision of the review hearing?

Yes, in the same way as you can appeal against any decision made at a licensing review hearing. There is the same 21-day limit to make your appeal to the Magistrates Court and pay the relevant fee, if you wish to appeal.

20. General advice on conducting off-sales

20.1 Should I verify the age of a customer at the point of sale, on delivery or both?

It is an offence under section 146 of the Licensing Act 2003 to sell alcohol to an individual aged under 18. The Act offers a defence that you believed that the individual was aged 18 or over, either because you took all reasonable steps to establish their age, or nobody could reasonably have suspected from the individual's appearance that he or she was aged under 18.

It is an offence under section 147 of the Licensing Act 2003 to knowingly allow the sale of alcohol to an individual aged under 18. This applies to anyone with the authority to prevent such a sale.

There is a further offence under section 151 of the Licensing Act of knowingly delivering alcohol to an individual aged under 18. There are some exemptions to the offence, including delivery to a customer's residence or place of work.

We would suggest that the most defensible approach is to verify the age of a customer at both the point of sale and at the point of delivery. The Home Office supports the [Challenge 25 scheme](#), which offers guidance, staff training and materials on preventing under-age sales and this will help premises licence holders to promote the licensing objective to protect children from harm.

20.2 Will I be held to account if people misbehave after drinking alcohol that I have sold to them to consume off the premises?

You may be held to account if that misbehaviour might reasonably have been foreseen. Examples might include:

- Selling a large quantity of alcohol to a group of people for consumption in a public space where there had recently been problems of drunken crime and disorder.
- Selling alcohol to street drinkers who have been associated with anti-social behaviour in the neighbourhood.

The police have the power under section 76 of the Anti-social Behaviour, Crime and Policing Act 2014 to issue a closure notice if there are reasonable grounds that the use of a particular premises has resulted, or is likely to result in nuisance to members of the public, or that there has been, or is likely to be, disorder near the premises which is associated with the use of the premises.

20.3 How do I best manage outside queues?

It is important to manage outside queues to ensure they do not cause a risk to individuals or other businesses or create additional security risks. This can be achieved by introducing queueing systems, having staff direct customers and protecting queues from traffic by routing them behind permanent physical structures such as street furniture, bike racks, bollards or putting up barriers to encourage social distancing.

20.4 Customer facilities

Customers who have purchased alcohol for an off-sale should be given access to toilets, if such toilets are otherwise open to the generality of on-sale customers.

20.5 Can I serve alcohol in any types of open containers, including beer glasses?

You should be mindful of the risk of beer glasses that are taken off the premises being broken and becoming a physical hazard. We encourage premises to only use glass open containers when serving customers seated at tables, or else selling alcohol to customers who will use the outdoor space attached to the premises or obtained by an application for a pavement license. For take-away sales, you should serve alcohol in alternative containers such as reusable plastic cups, a can or a bottle.

20.6 How can I help prevent litter?

You should be mindful of the potential for the products you sell to end up as litter. You should put in place what measures you can to remind your customers to not litter and to put their empty containers in a bin.

You can also ensure that items of litter are cleared from the width of your premises frontage, and from the front of your premises, across the pavement to the gutter. If your business is located in a pedestrianised area, you can clear the area the width of the frontage for two metres in front of the business. Also, clear any side alleys of litter if they belong to your business or border its premises. If your business is under any outstanding legal obligations, such as a Street Litter Control Notice of Cleansing Notice, these will take precedence over the recommendations here.

20.7 What can I do if I have concerns about noise and antisocial behaviour in relation to a venue?

Your local council should be the first point of contact to raise such concerns.